IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal No. 146-DB of 1998
Date of Decision: 12.12.2007

Raj Kumar and another..... Appellants

Versus

The State of Punjab ..... Respondent

Coram: Hon'ble Mr.Justice Ashutosh Mohunta
Hon'ble Mr. Justice Rakesh Kumar Garg

Present: Dr.Mrs. Deipa Singh and
Mr. Jainander Singh, Advocates
for the appellants.

Mr. V.K.Jindal, Addl. A.G. Punjab.

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ASHUTOSH MOHUNTA, J.

The accused/appellants Raj Kumar and Parkash Nath have filed this appeal challenging the judgment of the Additional Sessions Judge, Amritsar, dated 6.3.1998 vide which both of them have been convicted under Section 302 IPC for having committed the murder of Saurav, a young boy of 12 years and have been sentenced to undergo rigorous imprisonment for life and a fine of Rs.2000/- and in default of payment of fine to further undergo RI for 6 months.

The prosecution case has been unfolded on the statement of Inderbir Singh PW4. He has stated that he was doing the business of a commission agent of vegetables in the Sabzi Mandi at Amritsar in Shop No.63. For the purpose of his business he used to purchase vegetables from the farmers directly from the neighboring villages of Kot Khalsa and Dhapai. On 17.11.1994 he had gone to village Dhapai and talked to one Garib Dass for the purpose of purchasing seedlings (Paneeri). At about 9/10 AM when he was going towards the cauliflower fields on the certain side of village Dhapai he heard the loud shrieks from the nearby bushes. In the meantime, Garib Dass PW5 and one Jassa Singh who were working in the nearby fields also came there. The complainant saw that Parkash Nath son of Onkar Nath accused had caught hold of the

child from his arms whereas the other accused Raju, who was armed with a chhuri (dagger), was inflicting chhuri blows on the said child. A school bag containing books and two bicycles were lying nearby. The complainant saw the accused giving innumerable blows on the neck, head and abdomen of the child. The child was crying `Raju Na Mar, Na Mar' and spare me. On seeing the incident the complainant along with Garib Dass and Jassa Singh rushed to the spot and overpowered both the accused along with the chhuri which was held by the accused Raju. The child had succumbed to his injuries on the spot. The accused on being overpowered disclosed their names to be Parkash Nath and Raju. The complainant left for Police Station Islamabad in District Amritsar which was at a distance of 2 Kms. from the place of occurrence after leaving the dead body of the child and both the accused in the custody of Garib Dass and Jassa Singh. On the basis of the statement made by Inderbir Singh PW4, FIR in this case was recorded at 11 AM at Police Station Islamabad. The motive for causing the murder of Saurav, a young boy of 12 years, was that one year prior to the incident the accused Raju used to work in the Jewellery Shop of deceased's father namely Lalit. He was removed from service and was given beatings because of some lapses on part of the accused. The accused bore a grudge on this account and in order to teach a lesson to Lalit Arora, the father of the deceased, the child was murdered.

Immediately after lodging the FIR Kuldeep Kumar, SHO, PW8 along with other police officials including ASI Randhir Singh went to the place of occurrence where they found that Garib Dass and Jassa Singh were holding both the accused. Garib Dass PW5 handed over the chhuri Ex.P1 to Kuldeep Kumar SHO. Two cycles and a school bag of the deceased was also taken into possession. A rough site plan Ex.PQ was prepared and statements of the witnesses were recorded. The chhuri was taken into possession vide Memo Ex.PO and blood stained earth Ex.P5 was lifted from the place of occurrence and put in a parcel and was duly sealed. Inquest report Ex.PC was duly prepared and the dead body of the child Saurav was sent for postmortem examination at the SGTB Hospital, Amritsar. Dr. Gurmanjit Rai PW1 conducted the postmortem and found the following injuries:-

1. Incised wound5x1.5 cm was present on the left side of head. 1 cm above pinna of ear. It was vertically placed. It was scalp deep. Clotted blood was present.
2. Incised wound was present on the upper part of the pinna of left ear. The pinna was found cut through and through. Clotted blood was present.
3. Incised stab wound 3x1 cm on the left side of the neck 8 cm below lobule of ear clotted blood was present. On dissection, carotid vessels on left side were found cut. Mussles were found cut. The injury was found extending upto trachea.
4. Incised stab wound 3x1.5 cm on the top of left shoulder 6 cm medial to tip of shoulder. Clotted blood was present. On dissection the injury was found extending into the left pleura and left lung. Upper lobe of left lung was found cut. About 700 cc of fluid and clotted blood in the left pleura cavity was present.
5. Incised wound 3 x 1 cm was present on the back of left shoulder 4 cm below the tip of shoulder. Clotted blood was present. On dissection the injury was found to be muscle deep.
6. Incised wound 0-75 cm x 0.5 cm on the front of left shoulder. It was muscle deep. No blood was present around the wound.
7. Incised wound 3 x 1.5 cm on the front of left upper arm in its upper half. No clotted blood was found around the wound.
8. Incised wound 2 x 1 cm on the back of left upper arm in its upper half. No clotted blood was seen. On dissection injury No.7 was found communicating with 8 and underlying muscles were found cut.
9. Incised wound 3 cm x 0.5 cm on the front of left wrist. It was muscle deep. Clotted blood was present.
10. Incised wound 4 x 1.5 cm on the front of left elbow. No clotted blood was present on the wound.
11. Incised wound 2 x 1 cm was present on the front of left

upper arm in its lower one third. No clotted blood was present.

12. Incised wound 1.5 x 0.75 cm on the front of left side of chest. 5 cm from nipple at 2 O'clock position. It was skin deep. No clotted blood was present on the wound.

13. Three incised stab wounds 3 x 1.5 cm, 3 x 1.75 cm and 3 x 1 cm were present on the front abdomen. 10 cm, 12 cm and 9 cms from the umbilicus at 10' clock position. On dissection all the three wounds were found to be post-mortem and were muscle deep.

14. Two incised wounds 5 x 2 cm and 4 x 2 cms on the front of abdomen at 11 O'clock position both were postmortemed, no blood was seen and they were skin deep.

15. Incised wound 2.5 x 1 cm on the front of abdomen three cm. below umbilicus at 6 O'clock position. No blood was seen. The injury was muscle deep.

After completion of the investigation, charge-sheet was filed in the Court of the Judicial Magistrate Ist Class, Amritsar, who vide his commitment order dated 11.1.1995 committed the case to Sessions for trial and the accused were charged under Section 302 IPC.

In order to prove its case, the prosecution examined Dr. Gurmanjit Rai as PW1, Rishi Ram as PW2, Mohan Singh as PW3 and the two witnesses Inderbir Singh PW4 and Garib Dass PW5, Lalit Arora as PW6, Constable Sucha Singh as PW7 and Kuldip Kumar, SHO, the Investigating Officer as PW8. The prosecution also tendered in evidence a report of the Chemical Examiner Ex.PFF and report of the Serologist Ex.PGG and closed its evidence. Both the accused were examined under Section 313 Cr.P.C. wherein they pleaded that they were innocent and were falsely implicated. Accused Parkash Nath further pleaded that he never accompanied Raj Kumar accused and that the police has concocted his arrest and that he has been implicated falsely.

The trial Court found that the evidence given by PW4 Inderbir Singh and PW5 Garib Dass was trustworthy. Both these witnesses had witnessed the occurrence and had given a truthful account in the manner in

which the young boy Saurav was murdered. The trial Court held that the ocular testimony of PW4 and PW5 is duly corroborated by the medical evidence as well as from the report of the Chemical Examiner and the Serologist and on the basis of the above convicted the accused under Section 302 IPC and sentenced them to undergo imprisonment for life.

The appeal in this case was filed through Jail. We had appointed Dr. Mrs. Deipa Singh, Advocate, as amicus-curiae to defend the accused.

Learned counsel for the appellants has contended that although the occurrence took place at 10 A.M. on 17.11.1994 but the special report reached the Duty Magistrate at 5 P.M and hence as there is a delay of seven hours in the delivery of special report to the Duty Magistrate, therefore, the accused have been falsely implicated in this case. The argument raised by the counsel for the appellants is without any merit as the occurrence is said to have taken place on 17.11.1994 at about 10 A.M. and immediately after the occurrence PW4 Inderbir Singh had gone to the police station to lodge the report. The police reached the place of occurrence at about 11 A.M. or shortly thereafter, they took the accused in their custody and after sending the dead body for postmortem had sent the special report to the Duty Magistrate. The FIR in this case has been lodged promptly and there has been no delay whatsoever and therefore this argument of the counsel for the appellants is rejected.

Counsel for the appellants has also argued that the occurrence is alleged to have been witnessed by Inderbir Singh PW4 and Garib Dass PW5. However, these persons in the ordinary course should also have been witnesses to the inquest report but there is no attestation on their behalf on the inquest report and therefore the only inference which can be drawn is that PW4 and PW5 have been introduced to strengthen the prosecution case. This argument of the counsel is also without merit as Inderbir Singh PW4 and Garib Dass PW5 were strangers to the deceased and hence could not identify the dead body and therefore in the inquest they could not be expected to identify the dead body.

A perusal of the statement of the complainant Inderbir Singh PW4 shows that while he had gone to village Dhapai to purchase vegetables

he heard the shrieks of the deceased from the nearby bushes. The shrieks also attracted Garib Dass and Jassa Singh who were cultivating in the nearby fields. All the three persons saw that the deceased Saurav, who was a young boy of 12 years, was firmly caught hold by Parkash Nath whereas the other accused Raj Kumar was inflicting knife blows on his head, chest and abdomen. They also heard the deceased pleading `Raju Na Mar Na Mar'. All the aforementioned three persons nabbed the accused and the First Information Report was lodged within one hour of the occurrence.

Garib Dass PW5 has also given a detailed account in the manner in which the child Saurav was killed by the accused. His version is similar to that of Inderbir Singh. This witness along with the complainant PW4 and one Jassa Singh, a farmer from the nearby fields, had caught hold of the accused and had snatched the knife from the appellant Raju. The knife was handed over by him to the police. He had attested the recovery memo Ex.PH with regard to taking into possession two cycles, one of red colour and the other of black colour, from near the dead body. He was also a signatory to the school bag being taken into possession vide memo Ex.PJ. He had also attested the taking of the blood stained earth from the spot by putting his signatures vide memo Ex.PK. In his cross-examination PW5 has stated that he did not know the accused earlier and that he along with Jassa Singh had handed over the accused to the police.

The statements of the two witnesses have been duly corroborated by the medical evidence. Dr. Gurmanjit Rai PW1 found as many as 15 incised wounds on the body of the deceased Saurav. The young child was inflicted the knife injuries with total brutality. No remorse was shown by the accused. According to PW1 as a result of the injuries received the deceased died instantaneously and the same were sufficient to cause death in the ordinary course of nature. The testimony of the eye-witnesses also stands fully corroborated by the report of the Chemical Examiner Ex.PFF and the report of the Serologist Ex. PGG. As per the Chemical Examiner's report human blood was not only found on the small chhuri which was the weapon to the offence but was also found on the sweater and other clothes which were worn by the deceased. The report of the Serologist Ex.PGG is also to the same effect.

Lalit Arora, father of the deceased Saurav, appeared as PW6 and testified that the accused Raju was his employee about a year before the present occurrence. He had removed him from service as he was not a sincere worker and had caused minor losses to him. It is on this account that the accused bore a grudge against his removal from service by him and hence in order to take revenge he found Saurav to be a soft target through whom Lalit Arora PW6 could be harmed. Accordingly, the deceased Saurav was killed by the accused Raju in connivance with Parkash Nath.

From the aforementioned facts it is clear that the entire occurrence was seen by the eye-witnesses Inderbir Singh PW4 and Garib Dass PW5. They had not only seen the accused killing the child Saurav but had also nabbed him and handed over the accused to the police. In the present case PW4 and PW5 had no motive to falsely implicate the accused as they never knew him. They also did not know PW6 Lalit Arora. They have narrated the entire incident before the police as well as the Court truthfully.

The incident took place on 17.11.1994 at about 10 A.M and the FIR in this case was registered within one hour of the occurrence i.e. at 11 A.M. Thus, the prompt lodging of the FIR by a stranger Inderbir Singh PW4 clearly shows that the First Information Report had not been lodged after any deliberation or because of any ulterior motive.

Coming to the point of sentence, a co-ordinate Bench of this Court while admitting the appeal had issued *suo motu* notice to the accused as to why the sentence awarded to them be not enhanced. In this regard a perusal of the case file shows that the State of Punjab has not filed any appeal either against the enhancement of sentence or fine. In ***Dwarka Das and others v. State of Haryana*** 2003 A.I.R. (SC) 185 the Hon'ble Apex Court has held that the discretionary powers of the Court have to be exercised in accordance with the provisions of the law and not de hors the same. It is for the State Government to decide whether any appeal could be filed in the matter before the High Court or not. The Hon'ble Apex Court has held that the High Court cannot direct the State Government to file an appeal for enhancement of the sentence. It has been further held that “direction to file appeal not only stands as an excessive user of jurisdiction

but indicates exercise of advisory jurisdiction which the High Court does not possess and is unknown to law". Resultantly, there is no ground to enhance the sentence.

In view of the aforementioned discussion, we hold the appellants guilty of having committed the murder of Saurav and, accordingly, uphold their conviction and sentence as awarded by the Additional Sessions Judge, Amritsar, vide his judgment dated March 6,1998.

The appeal is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

12.12.2007
Rupi

(RAKESH KUMAR GARG)
JUDGE